Morris Glass & Construction, Inc. *and* International Union of Painters & Allied Trades, District Council 5. Case 36–CA–010804

March 22, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND MCFERRAN

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. International Union of Painters & Allied Trades, District Council 5 (the Union) filed a charge and amended charges on February 25 and 28, March 7 and 21, and May 9, 2011, respectively, against Morris Glass & Construction, Inc. (the Respondent), alleging that the Respondent violated Section 8(a) (3) and (1) of the Act.

Subsequently, prior to the issuance of a complaint, the Respondent and the Union entered into an informal settlement agreement, which was approved by the Regional Director for Region 19 and signed by the Officer-in-Charge for Subregion 36 on June 30, 2011. Among other things, the settlement agreement required the Respondent to: (1) post the notice and distribute it electronically, (2) mail copies of the notice to employees who worked for the Respondent at any time from December 1, 2010, to June 30, 2011, the date of the settlement agreement, and (3) make whole employees John Townsend and Brian Townsend within 7 days of receipt of the Subregion's backpay computations, with appropriate withholdings for each employee.

The settlement agreement also contained the following provision:

> The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue the complaint that will include the allegations spelled out above in the Scope of Agreement section. Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the aforementioned complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the General Counsel.

By letter dated June 30, 2011, the Board agent sent the Respondent a copy of the approved settlement agreement and advised the Respondent to take the steps necessary to comply and to inform the Subregion when it had done so.[1] Subsequently, the Subregion and the Respondent entered into a Backpay Installment Payment Agreement (payment agreement) and a Security Agreement (security agreement) approved by the Regional Director and signed by the Subregion's officer-in-charge on October 15, 2012.

Under the terms of the payment agreement, the Respondent agreed to pay a total of $22,326 in backpay, and $536.82 in interest. Specifically, the Respondent agreed to pay John Townsend $13,792 in backpay, less Federal and State tax, and $347.90 in interest. The Respondent also agreed to pay Brian Townsend $8,534 in backpay, less Federal and State tax, and $188.93 in interest. The payment agreement provided that "[t]he Settlement Amount shall bear simple interest, at the rate of 3% per annum, starting from the date of approval of this agreement, until the Settlement Amount is paid ("Installment Interest")."[2] The payment agreement also provided that the death of either employee "shall not reduce, forgive, or in any way alter the obligations of the Charged Party to make all payments specified in this Settlement Agreement and Appendices."

[1] The uncontested assertions in the motion for default judgment indicate that on July 11, 2011, the Respondent submitted a certification of posting indicating that it had posted the notice. On August 10 and 11, 2011, the Board agent reminded the Respondent to submit a report verifying that it had initiated all affirmative provisions of the settlement agreement, and requested that the Respondent provide the records necessary to calculate backpay for John Townsend and Brian Townsend. Thereafter, the Board agent and the Respondent exchanged additional information before agreeing to the amounts owed.

[2] The payment agreement further provided that the Respondent would make the payments in installments beginning on October 5, 2012, and continuing for 17 months thereafter, from November 5, 2012, until March 5, 2014, as set forth in an appendix. Any unpaid amounts, plus interest, would be added to the remaining balance due on March 5, 2014.

John Townsend died in May 2013. Despite its continuing obligation under the settlement agreement, the Respondent ceased making payments owed to him after April 2013.[3] By email dated August 16, 2013, the Board agent notified the Respondent that it had failed to comply with the settlement agreement by failing to make the required payments and that if the Respondent did not remedy its noncompliance within 14 days, the Regional Director would institute default proceedings.

During the fall of 2013, the Board agent contacted the Respondent on multiple occasions to obtain its full compliance with the settlement agreement. The Respondent made some additional payments, but ceased payments owed to both Brian Townsend and the estate of John Townsend after December 2013. During 2014 and early 2015, the Board agent made further attempts to secure the Respondent's compliance and to obtain information about the assets identified in the security agreement; however, the Respondent failed to comply.

By letter dated January 8, 2015, the Acting Regional Director notified the Respondent that it had failed to comply with the terms of the settlement agreement and that absent the Respondent's full compliance by January 23, 2015, the Region would initiate default proceedings, including issuing a complaint and filing a motion for default judgment with the Board. The Respondent failed to comply.

Accordingly, pursuant to the terms of the noncompliance provision of the settlement agreement, the Regional Director issued the complaint on February 26, 2015. Also on February 26, the General Counsel filed a Motion for Default Judgment with the Board. On March 3, 2015, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by failing to: (1) make whole the estate of John Townsend by paying the amounts set forth in the payment agreement, (2) make whole Brian Townsend by paying the amounts set forth in the payment agreement, and (3) mail copies of the notice to employees employed by the Respondent between December 10, 2010, and June 30, 2011. Consequently, pursuant to the noncompliance provision of the settlement agreement set forth above, we find that all of the allegations in the complaint are true.[4] Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent has been a State of Oregon corporation engaged as a glazing contractor in the building and construction industry with an office and place of business in Astoria, Oregon.

In conducting its business operations during the 12 months ending February 2011, the Respondent derived gross revenue in excess of $500,000, and purchased materials or services valued in excess of $50,000 directly from entities located outside the State of Oregon.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Ryan Morris held the position of the Respondent's president-owner and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

In December 2010, and January 2011, the Respondent's employees Brian Townsend and John Townsend engaged in concerted activities with other employees for the purpose of mutual aid and protection when they complained to the Respondent about the Respondent's failure to pay a December 22, 2010 wage draw and January 2011 paychecks.

About December 2010, and since that date, the Respondent, by Morris, discharged and/or has withheld work from its employees John Townsend and Brian Townsend.

The Respondent engaged in this conduct because Brian Townsend and John Townsend engaged in the protected, concerted activity described above.

About January 26, 2011, the Respondent, by Morris, at the Issaquah High School in Issaquah, Washington:

(i) interrogated an employee by asking about his support for the Union's petition;

[3] When John Townsend died, his son, Logan Townsend, became the sole heir to the estate. Logan Townsend filed a claim against the United States for amounts due in the case of a deceased creditor on September 17, 2013.

[4] See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

(ii) told an employee that he needed to revoke his support for the Union;

(iii) told an employee not to sign any more paperwork from the Union without talking to him first; and

(iv) made coercive statements to an employee by stating that if employees wanted to work for the Respondent they should not have signed the Union's petition.

About January 27, 2011, the Respondent, by Morris, at the Issaquah High School in Issaquah, Washington, asked an employee if he had revoked his support for the Union.

About March 3, 2011, the Respondent, by Morris, at Les Schwab Tire in Longview, Washington, promised an employee increased wages and benefits if he voted against the Union in the representation election.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.[5]

The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to comply with the unmet terms of the settlement agreement approved by the Regional Director for Region 19 on June 30, 2011, and the payment agreement approved by the Regional Director on October 15, 2012. Accordingly, we shall order the Respondent to make Brian Townsend whole by payment to him of the remaining balance of backpay and interest as provided for in the payment agreement in the amount of $2043.18, with interest on that outstanding amount as described in the payment agreement. We shall also order the Respondent to make whole the estate of John Townsend by payment to the estate of the remaining balance of backpay and interest as provided for in the payment agreement in the amount of $7560.20, with interest on that outstanding amount as described in the payment agreement. Finally, we shall order the Respondent to mail copies of the notice to all employees employed by the Respondent at any time from December 1, 2010, to June 30, 2011.

In limiting our affirmative remedies to those enumerated above, we are mindful that the General Counsel is empowered under the default provision of the settlement agreement to seek "a full remedy for the violations found as is appropriate to remedy such violations," including backpay beyond that specified in the agreement.[6] However, in his Motion for Default Judgment, the General Counsel has not sought such additional remedies and we will not, sua sponte, include them.[7]

ORDER

The National Labor Relations Board orders that the Respondent, Morris Glass & Construction, Inc., Astoria, Oregon, its officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

1. Remit $2043.18 in wages and interest, with interest on that outstanding amount to the date of payment as described in the payment agreement, to Region 19 of the National Labor Relations Board to be disbursed to Brian Townsend, in accordance with the terms of the settlement agreement approved by the Regional Director for Region 19 on June 30, 2011.

2. Remit $7560.20 in wages and interest, with interest on that outstanding amount to the date of payment as described in the payment agreement, to Region 19 of the National Labor Relations Board to be disbursed to the estate of John Townsend, in accordance with the terms of the settlement agreement approved by the Regional Director for Region 19 on June 30, 2011.

3. Mail copies of the attached Notice to Employees to all its employees employed from December 10, 2010, to June 30, 2011.

4. Within 21 days after service by the Region, file with the Regional Director for Region 19 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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[5] Although the charge and amended charges alleged that certain conduct by the Respondent violated Sec. 8(a)(3) and (1), the complaint alleges only that the Respondent's conduct violates Sec. 8(a)(1), and we so find.

[6] As set forth above, the settlement agreement provided that, in case of noncompliance, the Board could "issue an order providing a full remedy for the violations found as is appropriate to remedy such violations."

[7] See, e.g., *Benchmark Mechanical, Inc.*, 348 NLRB 576 (2006). The General Counsel specifically requested in his motion for default judgment here that the Board order the Respondent to "promptly mail copies of the Notice to Employees to all its employees employed since December 10, 2010"; "pay Brian Townsend $2,043.18 representing the backpay and interest owed pursuant to the Payment Agreement, as well as compounded interest on that outstanding amount"; "pay John Townsend's estate $7,560.20 representing the backpay and interest owed pursuant to the Payment Agreement, as well as compounded interest on that outstanding amount; and… such other relief as the Board deems just and proper." Despite the General Counsel's request for compound interest, we shall order that simple interest be paid, as provided for in the payment agreement entered into on October 15, 2012.

Dated, Washington, D.C. March 22, 2016

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything that interferes with, restrains, or coerces employees with respect to these rights, and more specifically:

WE WILL NOT refuse to recall you from layoff for complaining about our payroll practices or other terms or conditions of employment.

WE WILL NOT ask you about your support for the International Union of Painters & Allied Trades District Council No. 5 (the "Union").

WE WILL NOT tell you not to sign any paperwork from the Union without consulting us first.

WE WILL NOT tell you that if you want to work for us, you should not support the Union.

WE WILL NOT promise you increased wages and benefits if you vote against the Union.

WE WILL respect your right to talk about your wages or other terms and conditions of employment.

WE WILL make decisions about who to recall from layoff without considering whether you have complained about our payroll practices or other terms and conditions of employment.

WE WILL respect your right to support or not support the Union.

WE WILL remove from all our files, including personnel files of John Townsend and Brian Townsend, all references to their termination from employment, ineligibility for rehire, and/or ineligibility for recall, and WE WILL notify them, in writing, that we have done so.

WE WILL offer John Townsend and Brian Townsend their jobs back along with all applicable rights and privileges. In the event that we do not currently have work available to give them, WE WILL place John Townsend and Brian Townsend on a preferential hiring list, and WE WILL notify them, in writing, that we have done so.

WE WILL pay John Townsend and Brian Townsend for any wages and other benefits they have lost because we refused to recall them from layoff, and WE WILL notify them, in writing, that we have done so.

MORRIS & GLASS CONSTRUCTION, INC.

The Board's decision can be found at www.nlrb.gov/case/36-CA-010804 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.